

## **REMARKS**

At the outset, Applicants wish to thank the Examiner for the courtesies extended during the June 13, 2007 telephone interview. At that interview, the current rejections, and possible amendments to put the claims in allowable form were discussed.

Applicants also wish to thank the Examiner for indicating that claims 3-5 and 9-11 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-11 are pending in this application. Claim 7 has been cancelled and its features incorporated into claim 1. Claims 5 and 11 have been amended to address an informality cited by the Examiner. Claim 8 has been amended in light of the rejections to more particularly point out and distinctly claim the present subject matter. Claims 3, 4, 9, and 10 have been amended to put them in independent form. No new matter has been introduced by these amendments.

### **Claim Objections**

The Examiner has objected to claims 5 and 11 for allegedly not having antecedent basis for the term “the reaction components.” Applicants have amended the claims, incorporating the changes suggested by the Examiner. Reconsideration and withdrawal of the Objection respectfully is requested.

### **Claim Rejections**

#### **Rejections under 35 USC §112 & 35 U.S.C. §101**

A. Response to rejection of claim 8 under 35 U.S.C. §112, second paragraph, and 35 U.S.C. §101.

In response to the rejection of claim 8 under 35 U.S.C. §112, second paragraph, and 35 U.S.C. §101, Applicants traverse the rejection. With respect to the rejection under §101, Applicants respectfully submit that the claim does not recite a “use.” The claims clearly recite a process, which is proper under §101.

With respect to the rejection under §112, second paragraph, Applicants again respectfully submit that the claim does not recite a “use.” If by the rejection, the Examiner is referring to the word “utilizing,” this is not indefinite, as specifically set forth at MPEP 2173.05(q). Contrary to the Examiner's assertion that claim 8 has no method/process step, the claim clearly recites the step of “utilizing.”

Reconsideration and withdrawal of the rejection is respectfully requested.

### Rejections Under 35 U.S.C. § 103

B      Response to rejection of claims 1, 2, and 6-8 under 35 U.S.C. §103(a) as being unpatentable over Winter et al. (“Winter”) in view of Park et al. (“Park”)

In response to the rejection of claims 1, 2, and 6-8 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,145,819 of Winter et al. (“Winter”) in view of the *Journal of Organometallic Chemistry*, 535 (1997) 29-32 of Park et al. (“Park”), Applicants submit that a *prima facie* case of obviousness has not been made out, and traverse the rejection.

With respect to a rejection under §103, in order to establish a *prima facie* case of obviousness, the Examiner must establish: (1) that some suggestion or motivation to modify the references exists; (2) a reasonable expectation of success; and (3) that the prior art references teach or suggest all the claim limitations. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (C.C.P.A. 1970).

First, as acknowledged by the Examiner in the Office Action, Winter does not teach preparation of metallocenes as recited in the present claims. Nevertheless, the Examiner has suggested modifying Winter to use the method of Park. The Examiner thus appears to utilize the substituted metallocene compounds of Winter in the process of Park. However, in paragraph 3.10, Synthesis 4b of Park, the reference discloses a mixture “in a diastereomeric ratio of 1:2 (rac-4b:meso-4b” (page 32, left column, lines 31-32). In other words, Park teaches a meso-selective process. Therefore, at most, the combination of references teaches a meso-selective process using substituted compounds, which clearly does not meet each and every limitation of the present claims. Further, even if the Examiner attempted to rely upon Winter to teach a rac-selective process, Applicants note that Winter does not teach preparation of a rac-selective composition using the steps of the present claims. Rather, Winter’s process results in a

“rac/meso mixture” (col. 9, line 11). A rac form could only be achieved after a number of refining steps (col. 9, lines 9-18).

Second, there is no motivation to modify the teachings of the references to arrive at the presently claimed subject matter, as suggested by the Examiner. The Examiner has argued that one skilled in the art would use Park’s method for the synthesis of metallocenes “because the method affords product in greater yield, thereby reducing time and cost of production.”(emphasis added) However, to modify Park’s process as suggested by the Examiner would at least require extra steps of purifying the meso-selective mixture of compounds produced by Park, thereby undermining the improvements, cited by the Examiner, allegedly gained by switching to Park’s process from Winter’s. The references simply do not teach a rac-selective material produced using the steps recited in the current claims.

Finally, there would be no reasonable expectation of success in making the suggested modifications in the references, since in view of the absence of a teaching of rac-selective materials by either the Park or Winter process, there would be no predictability in doing so. Therefore, none of the elements of a *prima facie* case have been made out by the Examiner.

Therefore, for the reasons discussed above, reconsideration and withdrawal of the rejection respectfully is requested.

Applicants respectfully request that a timely Notice of Allowance be issued in this case. Should the Examiner have questions or comments regarding this application or this Amendment, Applicant’s attorney would welcome the opportunity to discuss the case with the Examiner.

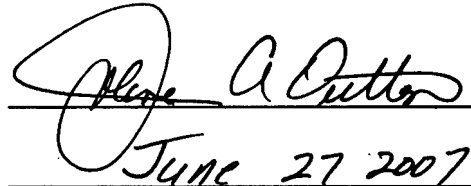
The Commissioner is hereby authorized to charge U.S. PTO Deposit Account 08-2336 in the amount of any fee required for consideration of this Amendment.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited with sufficient postage thereon with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 27, 2007.

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June 27 2007  

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Date of Signature

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